



MINUTES

JANUARY 2020 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Waylon Brown, Vice Chair	Representative Megan Jones, Chair
Senator Mark Costello	Representative Steven Holt
Senator Robert Hogg	Representative Joe Mitchell
Senator Pam Jochum [by teleconference]	Representative Amy Nielsen [by teleconference]
Senator Zach Whiting	Representative Rick L. Olson

EX OFFICIO, NONVOTING MEMBER: Michael Boal, Deputy Legal Counsel, Office of the Governor

LSA CONTACTS: Organizational staffing provided by Jack Ewing, Administrative Code Editor, 515.281.6048, and Kate O'Connor, Legal Counsel, 515.281.6329. Minutes prepared by Jack Ewing, Administrative Code Editor.

BULLETINS NEEDED FOR THIS MEETING: 12/18/19, 1/1/20

Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9 a.m. on Friday, January 10, 2020, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the December 10, 2019, meeting were approved. The next meeting was scheduled for Friday, February 7, 2020, at 9:00 a.m. at the State Capitol in Des Moines, Iowa. Mr. Jack Ewing, Administrative Code Editor, explained that Ms. Amber Shanahan-Fricke had taken a new position and introduced Ms. Kate O'Connor as the new secondary staffer for the committee. Mr. Ewing provided a summary of the updated 2019 rules analysis report. Mr. Ewing reviewed a draft he prepared of legislation containing technical statutory changes pertaining to rule making. Committee members discussed whether language governing how agencies report waivers of rules to the General Assembly should be amended in the legislation. A motion to approve the draft without changes carried on a short form vote. The meeting was adjourned at 12:15 p.m.

Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the LSA fiscal report.

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Julie Lovelady

ARC 4818C (NOIA), Medical Assistance Advisory Council, Rule 79.7

No discussion on ARC 4818C.

Rulemaking type is indicated in parentheses following the ARC number. The acronyms have the following meanings: Notice of Intended Action (NOIA), Amended Notice of Intended Action (ANOIA), Notice of Termination (NOT), Adopted and Filed Emergency (AFE), Filed Emergency After Notice (FEAN), and Adopted and Filed (AF).

ARC 4819C (NOIA), Brain Injury Waiver Budget Cap; Reimbursement Rate for Assertive Community Treatment Services, Rules 79.1(2), 83.82(2)“d”

In response to a question, Ms. Freudenberg explained that the fiscal impact analysis of the rulemaking was based on June 2018 data due to a lag in data reporting. Committee members recognized Ms. Julie Beckett, whose daughter, Katie, was the inspiration for the waiver that was the subject of the rulemaking.

No action taken on ARC 4819C.

ARC 4847C (AF), Medical Prior Authorizations—Uniform Process for Managed Care and Fee-for-Service Payment and Delivery Systems, Ch. 73

Committee members, Ms. Freudenberg, and Ms. Lovelady discussed the background of the rulemaking. Ms. Freudenberg explained that the department is working to have the forms for the uniform process in place by July 1, 2020, or possibly sooner. Ms. Lovelady explained that the rulemaking had taken as long as it did due to programming changes necessary to implement the uniform process. Mr. Ewing provided background on the rulemaking language in the enabling legislation. Committee members stated that implementing the uniform process is a high priority and expressed concern that implementation was taking so long.

Ms. Lovelady further explained that managed care organizations (MCOs) can choose which services to require prior authorization for, but the rulemaking will ensure that the same forms are used for services across MCOs and fee-for-service. She explained that the department’s website lists which services are subject to prior authorization.

No action taken on ARC 4847C.

INSURANCE DIVISION

Representing the agency: Tracy Swalwell

ARC 4821C (NOIA), Insurance Producers—Five-Year Review of Rules, Chs. 10, 11, 13, 48

Committee members asked for clarification on language relating to state debts, which Ms. Swalwell explained was not new, just being transferred from elsewhere in the rules. She explained that the language was based on a statutory requirement.

No action taken on ARC 4821C.

ARC 4840C (NOIA), Notice to Suppliers of Information, Rule 2.10

No discussion on ARC 4840C.

UTILITIES DIVISION

Representing the agency: Cecil Wright

ARC 4831C (AF), Regulation of Telecommunications Service, Ch. 22

No discussion on ARC 4831C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 4829C (AF), Family Planning Services Funding Prioritization, Restrictions and Reporting, Ch. 75

Committee members asked what bill the rulemaking was implementing and asked that agencies include a bill number when a rulemaking is implementing legislation. Ms. Dixon stated this rulemaking implements section 98 of 2019 Iowa Acts, House File 766.

No action taken on ARC 4829C.

ARC 4830C (AF), Medical Residency Training State Matching Grants Program, Rules 108.3(5), 108.4, 108.5

No discussion on ARC 4830C.

MEDICINE BOARD

Representing the agency: Joe Fraioli

ARC 4820C (NOIA), Mandatory Training for Identifying and Reporting Abuse, Rule 11.4
No discussion on ARC 4820C.

ARC 4835C (AF), Supervision of a Conditional Prescribing Psychologist; Collaboration with a Prescribing Psychologist; Grounds for Discipline, Rules 19.10-19.12

Committee members asked what the statutory basis of the rulemaking was and why it had taken so long to complete. Mr. Fraioli explained that the rulemaking is based on Iowa Code chapter 154B and the rulemaking took longer than usual to complete because the board had to work with the Board of Psychology on it. He said he would provide more information to Mr. Ewing after the meeting.

No action taken on ARC 4835C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 4837C (NOIA), Controlled Substance Registration—Renewal, Cancellation, Rules 10.6(2), 10.9(7)

Committee members and Ms. Mears discussed why the rulemaking is necessary. She explained that the rulemaking is intended to ameliorate situations where a registrant who previously worked with controlled substances forgets to renew their registration because they are no longer working with controlled substances in Iowa. She explained that such a registration is different than a pharmacist license, as registrants are physicians. Committee members questioned whether registration should instead be cancelled if a registrant forgets to renew and also expressed concern that the rulemaking could encourage untimely renewals and cause a loss of revenue for the board. Ms. Mears noted that a person improperly writing prescriptions without registration could be subject to sanctions by the board.

No action taken on ARC 4837C.

REVENUE DEPARTMENT

Representing the agency: Benjamin Clough, Tim Reilly

ARC 4843C (NOIA), Global Intangible Low Tax Income; Apportionment of Investment Income, Rules 54.2, 59.28(2)“p”

Committee members asked for an explanation of the basis of the rulemaking. Mr. Reilly explained that the rulemaking is a result of state legislation from 2017 that requires coupling with federal tax law, and the federal Tax Cuts and Jobs Act, which newly subjected global intangible low tax income to taxation. Mr. Clough explained that the federal intent was to impose taxation where a domestic corporation set up a foreign corporation and shifted income to the foreign corporation in order to avoid taxation in the United States.

In further discussion, Mr. Reilly and Mr. Clough explained that the department will be able to track such income using federal tax returns, that it is not known how many Iowa businesses will be affected by the rulemaking, and other states have used varying approaches for such income. Some tax portions of it, some do not tax it at all, and some treat it as a dividend.

Mr. Tom Sands spoke on behalf of the Iowa Taxpayers Association (ITA). He expressed sympathy for the department’s position in light of the statutory requirement for federal conformity. He stated that he would submit lengthy written comments to the department and committee and that the underlying issues of state, federal, and global taxation are complicated. He explained that legislative action on the matter is needed, as, in addition to problems with the rulemaking, the results of current law are unfair. He stated that such income should be treated as dividend income.

In further discussion with committee members, Mr. Sands explained that while ITA supports total conformity with federal tax law, more clarity is needed regarding this specific income, as coupling on this matter can be problematic.

No action taken on ARC 4843C.

TRANSPORTATION DEPARTMENT

Representing the agency: Sara Siedsma

ARC 4851C (AF), Electronic Replacement of Driver's License or Nonoperator's Identification Card, Rules 602.2(4), 605.11, 605.12(1)“a,” 630.3
No discussion on ARC 4851C.

ARC 4836C (NOIA), Commercial Driver Licensing, Ch. 607
No discussion on ARC 4836C.

HISTORICAL DIVISION

Representing the agency: Anthony Jahn

ARC 4827C (AF), Confidential Records; Ancient Records; Vital Statistics, Rule 3.9

Committee members asked why the rulemaking differentiates fetal deaths from other deaths. Mr. Jahn explained the history of the record series for fetal death, noting there was legislation on the subject a few years back.

Committee members expressed concern that when certain records become public after 75 years, a person who is the subject of such a record could suddenly become subject to numerous inquiries, particularly since no notification is given to the subject once the records become public. Mr. Jahn explained that such records can only be requested specifically and cannot be browsed. Committee members asked what the purpose is of making such records public after 75 years. He explained that there is a significant interest in genealogical and historical research and noted that groups such as Daughters of the American Revolution require proof of lineage. He stated that 45 percent of the division's business is genealogical research.

Additional discussion occurred regarding the history of the 75-year requirement and whether it should be updated due to increased life expectancy.

No action taken on ARC 4827C.

SECRETARY OF STATE

Representing the agency: Molly Widen

ARC 4804C (NOIA), Felony Conviction Verification Process, Rule 28.4

Committee members and Ms. Widen discussed the Secretary's new felony conviction verification process. Ms. Widen explained that the rulemaking sets out the process for verification from 2020 going forward, with old records undergoing review. She explained that the verification process is a separate issue from restoration of felons' voting rights. She explained that there have been erroneous cancellations of voter registrations due to poor data received from the judicial branch. She noted that the cancellations are carried out by county auditors after receiving notifications from the Secretary based on data from the judicial branch.

Additional discussion occurred regarding felonies committed in other states that might have different definitions than Iowa. Ms. Widen explained that the Secretary has no mechanism for tracking felonies committed out of state or how other states define felonies and has no data on this matter. She explained that caselaw in Iowa provides that persons who have committed infamous crimes, defined as felonies, are ineligible to vote, and individuals who have committed felonies in other states are responsible for knowing their voter eligibility status. She explained that such persons should contact the Governor's office about seeking restoration of voting rights and that any further clarification of the question would need to be sought from legislative action if caselaw, statutory law, and the Iowa Constitution do not provide sufficient clarity. She noted the Secretary could seek advice from the Attorney General's office if specific questions on this matter arose.

Mr. Daniel Zeno spoke on behalf of the American Civil Liberties Union. He expressed support for the Secretary establishing a felony conviction verification process when there was none before, which had led to erroneous cancellation of voter registration in some cases. He stated that the rulemaking was brief and written very broadly, with little detail about what the Secretary and the judicial branch would actually do. He stated that the rulemaking should describe all of the steps of the verification process and include a month-by-month plan for completing all verification of past records by the 2020 election as well as a process for notification of voters whose registration is cancelled. Committee members urged the Secretary not to make the rule language too prescriptive, which would make revising the verification process in the future more difficult. Ms. Widen explained that the rulemaking can only govern actions that the Secretary will carry out; the rulemaking cannot control the actions of the judicial branch.

No action taken on ARC 4804C.

LOTTERY AUTHORITY, IOWA

Representing the agency: Mary Neubauer

ARC 4814C (AF), Vendor and Licensing Appeals, Rules 2.17, 5.2, 5.3, 5.6, 5.7, 5.12, 5.25-5.27, 5.29

Committee members commended the authority's and Ms. Neubauer's efforts to resolve concerns raised by the committee when the rulemaking was reviewed under notice.

No action taken on ARC 4814C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Melissa Bird

ARC 4849C (AF), Funeral Directors, Funeral and Cremation Establishments—Disinterment Permits, Rule 100.9(6)

Committee members questioned why this rulemaking was necessary and why the rulemaking had not been revised after the committee raised concerns when the rulemaking was reviewed on notice. Ms. Bird explained that the rulemaking was necessary to correct a conflict discovered in 2017 between the subrule at issue, 645—100.9(6), and Iowa Code section 144.34 regarding the grounds for which a permit to disinter human or cremated remains can be issued by the Department of Public Health. The department had received a request for a disinterment permit to disinter cremated remains. The department, in consultation with the Attorney General's office, ultimately concluded that the department did not have the statutory authority to issue a disinterment permit for cremated remains, as final disposition of cremated remains occurs prior to their interment. The department also concluded that it could not issue a disinterment permit for a disinterment carried out for reasons other than the two provided in statute: autopsy or reburial. The person making the request wanted to keep the cremated remains at home and not rebury them. Committee members questioned why the bureau had not sought resolution of the issue sooner, such as by requesting a statutory change. Ms. Bird explained that the bureau's role is only to provide administrative support and that the Board of Mortuary Science or a stakeholder could advocate for a statutory change if one is needed. She explained that the board pursued the rulemaking in order to align the rule with current Code so that funeral directors would not be faced with a conflict between statute and rule and possibly be subject to a penalty under the rule.

Committee members stated that it would have been more efficient for the bureau to have sought a departmental bill or at least brought the issue to the attention of legislators sooner. Committee members asked if cremated remains can be moved after burial. Ms. Bird explained that a disinterment permit cannot be issued at that point. Members questioned whether the distinction between cremated and uncremated remains is appropriate.

Mr. Michael Triplett, speaking on behalf of the Iowa Funeral Directors' Association, asserted that the issue could be most easily resolved statutorily. He explained that the statutory language at issue is quite old, dating to before people were regularly cremated. He urged the committee to impose a session delay on the rulemaking.

Session Delay

A motion for a session delay on ARC 4849C carried 9-0 on a short form vote.

CHIEF INFORMATION OFFICER, OFFICE OF THE

Representing the agency: Matt Behrens, Luke Dawson

ARC 4823C (AF), Waivers, Ch. 7

Committee members thanked the office for taking the committee's comments from the review of the notice under consideration.

No action taken on ARC 4823C.

ARC 4824C (AF), Information Technology Governance, Ch. 8

No discussion on ARC 4824C.

ARC 4825C (AF), Procurement of Information Technology, Ch. 10

No discussion on ARC 4825C.

ARC 4826C (AF), Vendor Appeals, Ch. 11

In response to a question from committee members, Mr. Dawson reviewed the steps of the office's vendor appeal process.

No action taken on ARC 4826C.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

Representing the agency: Maison Bleam, Robin Pruisner

ARC 4838C (NOIA), Dairy—Adoption by Reference of Public Health Service Regulations, Rules 68.1, 68.13

No discussion on ARC 4838C.

ARC 4844C (NOIA), National Institute of Standards and Technology (NIST) Handbook 130—Adoption by Reference of Section Relating to Gasoline-Ethanol Blends, Rule 85.39

No discussion on ARC 4844C.

ARC 4841C (NOIA), Hemp, 40.1, Ch. 96, also Filed Emergency ARC 4842C.

Committee members and Ms. Pruisner discussed the federal approval process for Iowa's hemp program. Ms. Pruisner explained that the enabling legislation gave the department the authority to waive portions of the legislation if necessary to gain federal approval, but that revising the rulemaking or seeking statutory changes could also be options. She explained that the United States Department of Agriculture had released an interim federal rule on October 31, 2019, that would be effective for two years and that contained unexpected provisions, including one that required the harvesting of hemp within 15 days of sampling by the department, which will require that the department allow harvesting to begin immediately after sampling is taken. This will require the department to waive a statutory requirement that samples be tested by the department prior to harvesting, as the department would not be able to carry out the necessary testing of samples within the 15 days.

Committee members expressed concern that the department could use its authority to waive statutory requirements to waive the limit on the amount of tetrahydrocannabinol (THC) permissible in a hemp crop. Ms. Pruisner explained that federal requirements limit the THC levels and would supersede any state-level requirements or waivers.

Additional discussion occurred regarding staff levels at the department's hemp testing laboratory, destruction of hemp crops that exceed permissible THC levels, the number of permits to grow hemp that may be issued this year, hemp that already grows naturally in Iowa, how hemp will be sold and used, and possible legislation to ban the smoking of hemp and further regulate the over-the-counter sale of products containing cannabidiol.

Ms. Megan Malloy, speaking on behalf of the Iowa Hemp Association, generally expressed support for the rulemaking, but raised concerns that the rulemaking may be too punitive regarding the presence of hemp that already grows naturally in Iowa, which she explained is a result of industrial hemp grown in Iowa during World War II. She asserted that the presence of such naturally growing hemp does not necessarily indicate wrongdoing on anyone's part.
No action taken on ARC 4841C or ARC 4842C.

SOIL CONSERVATION AND WATER QUALITY DIVISION

Representing the agency: Maison Bleam

ARC 4839C (NOIA), State Soil Conservation and Water Quality Committee—Quorum, Rule 2.6(1)
No discussion on ARC 4839C.

REGENTS BOARD

Representing the agency: Trevor Glanz, Kristin Bauer

ARC 4850C (AF), Human Resources Management—Merit System Rules, Ch. 3
Committee members asked about the reason for certain amendments, and Ms. Bauer and Mr. Glanz explained that the language stricken had not been used in recent memory. In response to additional questions, they explained that changes to requirements for pay for rehiring veterans conform to federal law and that requiring competitive hiring when certain other employees seek to be rehired was a matter of fairness.
No action taken on ARC 4850C.

RACING AND GAMING COMMISSION

Representing the agency: Brian Ohorilko

ARC 4822C (NOIA), Racing; Gaming, Rules 5.4, 7.7(14), 8.4(1), 10.4, 10.5(1)“a”(12), 10.6, 11.5(5)“b,”
12.3(1)
No discussion on ARC 4822C.

ARC 4807C (ANOIA), Sports Wagering; Fantasy Sports Contests, Chs. 1, 3-6, 8, 13, 14
No discussion on ARC 4807C.

EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes

ARC 4808C (AF), Education Program Standards — Contracted Courses Used to Meet School or School District Requirements, Rule 12.5
No discussion on ARC 4808C.

ARC 4809C (AF), Senior Year Plus Program, Ch. 22
No discussion on ARC 4809C.

ARC 4810C (AF), Career Academy Incentive Fund, Rule 46.13
No discussion on ARC 4810C.

ARC 4811C (AF), Statewide Sales and Services Tax for School Infrastructure, Ch. 96
No discussion on ARC 4811C.

ARC 4812C (AF), Supplementary Weighting, Rules 97.1, 97.2(5), 97.5, 97.8
No discussion on ARC 4812C.

ARC 4813C (AF), Financial Management of Categorical Funding—Secure an Advanced Vision for Education Fund, School Nutrition Fund, Rules 98.21, 98.69, 98.74(3)“b”

No discussion on ARC 4813C.

ARC 4815C (NOIA), Extracurricular Interscholastic Competition—Scholarship Rules, Dead Period, Rule 36.15

No discussion on ARC 4815C.

ARC 4817C (NOIA), Physical Plant and Equipment Levy (PPEL) Fund — Repairing Transportation Equipment for Transporting of Students, Rule 98.64(2)“1”

Committee members asked if the rulemaking would prevent scenarios where a school district would sell a school bus to a mechanic and then buy it back, and Mr. Mayes stated it would.

No action taken on ARC 4817C.

ARC 4816C (NOIA), Corporal Punishment, Physical Restraint, Seclusion, and Other Physical Contact with Students, Ch. 103

Committee members asked how the rulemaking would apply to situations where a student has a tantrum and the classroom is cleared of other students. Mr. Mayes explained that the rulemaking does not apply to “room clears,” which he said are a separate issue. He explained that the rulemaking would not require frequent room clears and that if frequent room clears proved necessary, that would suggest that additional steps not covered by the rulemaking need to be taken.

In response to an additional question, Mr. Mayes clarified how the size of seclusion rooms is measured under the rulemaking.

No action taken on ARC 4816C.